

Appl. No. 10/574,134
Amendment dated November 5, 2008
Reply to Office Action of August 15, 2008

REMARKS

In the August 15, 2008 Office Action, claims 1-3 and 11-15 stand rejected in view of prior art, while claims 4-10 and 16 were indicated as containing allowable subject matter. Claims 12-15 also were objected to as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as the invention. No other objections or rejections were made in the Office Action.

Status of Claims and Amendments

In response to the August 15, 2008 Office Action, Applicants have amended claims 3-10 and 12-16 as indicated above. In addition, claims 1, 2 and 11 have been cancelled. Applicants wish to thank the Examiner for the indication of allowable subject matter and the thorough examination of this application. In summary, claims 3-10 and 12-16 are pending, with claims 3, 4, 10, 12, 13, 14 and 16 being independent claims. Reexamination and reconsideration of the pending claims are respectfully requested in view of the above amendments and the following comments.

Claim Rejections - 35 U.S.C. §112

In numbered paragraph 2 of the Office Action, claims 12-15 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite. In response, Applicants have amended claims 12-15 to insert antecedent basis for each limitation.

Applicants believe that the claims now comply with 35 U.S.C. §112, second paragraph. Withdrawal of the rejection is respectfully requested.

Rejections - 35 U.S.C. § 102

In numbered paragraph 5 of the Office Action, claims 1-3 and 11 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,173,697 (Goto) or U.S. Patent No. 4,779,597 (Takaku et al.). In numbered paragraph 6 of the Office Action, claims 1-3 and

11-12 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,779,597 (Takaku et al.). Finally, in numbered paragraph 7 of the Office Action, claims 1-3, 11, 12 and 15 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0035391 (Fuwa). In response, Applicants have cancelled claims 1, 2 and 11 and have amended claims 3 and 12 to clearly distinguish prior art of record.

In particular, claims 3 and 12 have been rewritten in independent form. Contrary to the statements set forth in the Office Action, Applicants do not believe that the prior art discloses increasing the aperture of the throttle valve when the fuel injection amount is low as set forth in Claim 3 or delaying a start of a fuel injection timing more than when normal control is performed as set forth in Claim 12.

Regarding claim 3, in Goto, the fail-safe system merely fixes the opening degree of the throttle valve (column 3, line 19). In Takaku et al., the throttle valve is not even maintained at a fixed position, let alone increased (figure 4, column 4). In Fuwa, the throttle valve is maintained at a fixed position, but it is not increased (figures 19 and 20, paragraphs [0212] and [0230]). Clearly, increasing the aperture of the throttle valve when the fuel injection amount is low, as set forth in Claim 3, is *not* disclosed or suggested by Goto, Takaku et al., Fuwa or any other prior art of record. It is *well settled under U.S. patent law* that for a reference to anticipate a claim, the reference must disclose each and every element of the claim within the reference. Therefore, Applicants respectfully submit that claim 3, as now amended, is not anticipated by the prior art of record.

Regarding claim 12, Fuwa does not disclose delaying a start of a fuel injection timing but rather discloses delaying an ignition timing (see paragraphs [0044] and [0210] and figure 20B). As for Takaku et al., the specification merely mentions controlling the “fuel injection

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period" and does not indicate how this is controlled (see column 4, line 21). Furthermore, the term "period" does not equate with *the start timing* of fuel injection. Therefore, it is clear that delaying the start timing of fuel injection is *not* disclosed or suggested by Fuwa or Takaku et al. or any other prior art of record. It is *well settled under U.S. patent law* that for a reference to anticipate a claim, the reference must disclose each and every element of the claim within the reference. Therefore, Applicants respectfully submit that claim 12, as now amended, is not anticipated by the prior art of record.

Withdrawal of this rejection is respectfully requested.

Allowable Subject Matter

In numbered paragraph 8 and 9 of the Office Action, claims 4-10, 13, 14 and 16 were indicated as containing allowable subject matter. Applicants wish to thank the Examiner for this indication of allowable subject matter and the thorough examination of this application. In response, Applicants have amended claims 4, 10, 13, 14 and 16 to place them in independent form. Thus, independent claims 4, 10, 13, 14 and 16 and dependent claims 5-9 are believed to be allowable.

Prior Art Citation

In the Office Action, additional prior art references were made of record. Applicants believe that these references do not render the claimed invention obvious.

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In view of the foregoing amendment and comments, Applicants respectfully assert that claims 3-10 and 12-16 are now in condition for allowance. Reexamination and reconsideration of the pending claims are respectfully requested.

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Respectfully submitted,

/David L. Tarnoff/
David L. Tarnoff
Reg. No. 32,383

GLOBAL IP COUNSELORS, LLP
1233 Twentieth Street, NW, Suite 700
Washington, DC 20036
(202)-293-0444
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